

## **2011 DRAFTING REQUEST**

### **Assembly Substitute Amendment (ASA-AB61)**

Received: **09/28/2011**

Received By: **jkreye**

Wanted: **As time permits**

Companion to LRB: **s0192**

For: **Patricia Strachota (608) 264-8486**

By/Representing:

May Contact:

Drafter: **jkreye**

Subject: **Tax, Business - credits**

Addl. Drafters: **fknepp**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Strachota@legis.wisconsin.gov**

Carbon copy (CC:) to: **mary.matthias@legis.wisconsin.gov**

**joseph.kreye@legis.wisconsin.gov**  
**fern.knepp@legis.wisconsin.gov**

---

#### **Pre Topic:**

No specific pre topic given

---

#### **Topic:**

Tax credit for green data centers

---

#### **Instructions:**

See attached

---

#### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 09/29/2011 fknepp 09/29/2011	jdye 09/30/2011		_____ _____ _____ _____			
/1			rschluet 09/30/2011	_____ _____	sbasford 09/30/2011	sbasford 09/30/2011	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	jkreye 09/30/2011	jdyer 09/30/2011	jfrantze 09/30/2011	_____	sbasford 09/30/2011	sbasford 09/30/2011	

FE Sent For:

&lt;END&gt;

## 2011 DRAFTING REQUEST

### Assembly Substitute Amendment (ASA-AB61)

Received: **09/28/2011**

Received By: **jkreye**

Wanted: **As time permits**

Companion to LRB: **s0192**

For: **Patricia Strachota (608) 264-8486**

By/Representing:

May Contact:

Drafter: **jkreye**

Subject: **Tax, Business - credits**

Addl. Drafters: **fknepp**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Strachota@legis.wisconsin.gov**

Carbon copy (CC:) to: **mary.matthias@legis.wisconsin.gov**

**joseph.kreye@legis.wisconsin.gov**  
**fern.knepp@legis.wisconsin.gov**

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Tax credit for green data centers

---

#### Instructions:

See attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 09/29/2011	jdye 09/30/2011		_____			
	fknepp 09/29/2011			_____			
				_____			
/1			rschluet 09/30/2011	_____	sbasford 09/30/2011	sbasford 09/30/2011	

*Handwritten notes: 29/30 jld, 9/30, 9/30*

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

<END>

## 2011 DRAFTING REQUEST

### Assembly Substitute Amendment (ASA-AB61)

Received: 09/28/2011

Received By: jkreye

Wanted: As time permits

Companion to LRB:

For: Patricia Strachota (608) 264-8486

By/Representing:

May Contact:

Drafter: jkreye

Subject: Tax, Business - credits

Addl. Drafters: fknepp

Extra Copies:

Submit via email: YES

Requester's email: Rep.Strachota@legis.wisconsin.gov

Carbon copy (CC:) to: mary.matthias@legis.wisconsin.gov

joseph.kreye@legis.wisconsin.gov

fern.knepp@legis.wisconsin.gov

---

#### Pre Topic:

No specific pre topic given

---

#### Topic:

Tax credit for green data centers

---

#### Instructions:

See attached

---

#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/2	jkreye	1 9/30 jld	9/30/11	R/m 9/30			

FE Sent For:

<END>

**Kreye, Joseph**

---

**From:** Matthias, Mary  
**Sent:** Wednesday, September 28, 2011 3:41 PM  
**To:** Kreye, Joseph  
**Cc:** Henning, Anna  
**Subject:** RE: SB 31 (green data centers)

Joe-

I just got off the phone with Jim Emerson and Heather from the Strachota office. They would like items 1-3 as described below and on item 4, they do not want the credit to be available for *operating* a data center. I don't think you necessarily need to amend the draft for item 4, but if you think of a way to do it that makes it clearer, go for it.

Also you can move the certification requirements into the WEDC chapter as we discussed in the e-mail earlier today.

Rep. Strachota wants the same amendment for AB 61. She'd like it available for the hearing in the bill next Tuesday.

They don't care if it's a sub or a simple—whatever is easiest (i.e. quickest) for you.

Thanks and let me know if you'd like me to look at any language as you work on it.

**Mary Matthias**

Senior Staff Attorney  
Wisconsin Legislative Council Staff  
Ph.(608)266-0932;Fax (608)266-3830

---

**From:** Kreye, Joseph  
**Sent:** Wednesday, September 28, 2011 1:03 PM  
**To:** Matthias, Mary; Emerson, James  
**Subject:** RE: SB 31 (green data centers)

I think we're looking at producing a substitute amendment for this, correct?

When do we need the amendment? A lot of us are working on priority projects right now so it would be good to know the deadline.

Joe

**Joseph Kreye**  
**Senior Legislative Attorney**  
Legislative Reference Bureau  
608 266-2263

9/28/2011

---

**From:** Matthias, Mary  
**Sent:** Wednesday, September 28, 2011 10:26 AM  
**To:** Emerson, James  
**Cc:** Kreye, Joseph  
**Subject:** SB 31 (green data centers)

Jim-

Andrew and I discussed having an amendment to SB 31 drafted based on committee discussion and my comments.

Below are the items we discussed-- item 4 needs particular attention.

Feel free to call me- I should be near my desk most of the day---6-0932.

1. Amend SEC. 13 to remove references to Commerce and replace them with references to WEDC. WEDC doesn't have authority to promulgate rules, so instead require WEDC to "adopt policies and procedures" to administer the program.

- Because the Department of Commerce no longer exists.

2. Rework the language on page 3 to make it clear that in order to qualify as a green data center eligible for the credit, the data center must have the components listed—ie., at least 2 of the items listed under #1., AND at least 2 of the items listed under # 2 AND equipment or components that have a reduced amount, or none, of at least 4 of the elements listed under #3. Then clarify that the credit is available for the amount paid for any of those items.

- Because I think the draft is confusing and could possible be interpreted to *require* a person claiming the tax credit to request the credit for each item, when in fact they might rather want to request the credit for only selected items. This allows the person claiming the credit to make the choice and does not affect the substantive requirement that all these elements be present in the data center.

3. Clarify that the credit is available for costs of retrofitting an existing data center to make it green.

- There was general agreement among the authors and committee members that the credit should be available for retrofits. As drafted, I think it could be interpreted to be available only for new construction.

4. Clarify that the credit is not available for costs of operating a data center that already exists and is already green. The credit may be used for costs of operating a green data center that is newly-constructed or was made green through retrofitting. (Not sure how to word this...specify that construction or retrofitting must commence after the effective date of the bill? The point is to ensure that the credit is used as an incentive, not a

reward for work already done)

- It was not absolutely clear which way the authors want to go on this, but the instructions above are my best guess at the way the conversation was going. It was my impression that they did not want to allow the credit to be used for costs of operating a green data center already in existence because then the credit would not be working as an incentive. **HOWEVER--after looking at the draft more closely, I don't think it actually allows the credit to be awarded for operational costs at all, only for the costs of purchasing and installing the items listed in the bill.** (I will get a second opinion on my interpretation and get back to you.) I think the word "operate" is in the draft to make clear that the items for which the credit is claimed must actually be used to operate a green data center. It does seem that if the credit is allowed for operational costs, that could eat it all up pretty quickly. Let me know which way you want to go on this. I think the pertinent language is going to be reworked under drafting instruction #2 above anyway, so there is an opportunity to clarify this issue in whichever direction you prefer.

*Mary Matthias*  
Senior Staff Attorney  
Wisconsin Legislative Council Staff  
266-0932



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

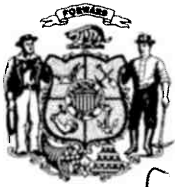
date

CRB 5091/1  
dn  
FFK:.....  
Jld

To Representative Strachota: ✓

This draft creates a tax credit program under which the Wisconsin Economic Development Corporation (WEDC) ✓ certifies businesses to claim a tax credit. Structuring a tax credit program so that a taxpayer is certified to claim a tax credit by an entity that is not a unit of government is a novel issue in Wisconsin. ✓ This new structure presents a risk that a court could find that this tax program includes an impermissible delegation of legislature's power to tax because it authorizes WEDC, which is not the state, to forego tax revenue for the state in place of the state. ✓ It is possible that the risk of a court finding that this program includes an impermissible delegation of legislature's power could be minimized by including additional limits on WEDC's discretion or creating a larger role for the state in the process under which the tax credits are issued, or both. However, with a novel issue such as this one, it is impossible to predict how a court might treat this tax credit program in any given case. ✓

Fern Knepp  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: fern.knepp@legis.wisconsin.gov



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-102771  
JK&CT8:jld:jf

stay

FFK

LPS-check  
auto refs

ASA

dwte

2011 ASSEMBLY BILL 61

due Friday  
9-30

March 28, 2011 - Introduced by Representatives STRACHOTA, LEMAHIEU and SPANBAUER, cosponsored by Senator DARLING. Referred to Committee on Jobs, Economy and Small Business.

✓

neg

1 AN ACT *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45  
2 (2) (a) 10. and 77.92 (4); and *to create* 71.07 (6n), 71.10 (4) (cr), 71.28 (6n), 71.30  
3 (3) (cr), 71.47 (6n) and 71.49 (1) (cr) of the statutes; **relating to:** creating an  
4 income and franchise tax credit for constructing and operating a data center  
5 that is designed for maximum energy efficiency and minimum environmental  
6 impact and providing an exemption from rule-making procedures.

**Analysis by the Legislative Reference Bureau**

This bill creates an income and franchise tax credit in an amount equal to the amount a person paid in the taxable year for items that are either energy efficient or have a minimal environmental impact and that are used to construct or operate a "green data center." Under the bill, a green data center is a repository for the storage, management, and dissemination of data, if the mechanical, lighting, electrical, and computer systems of the real property in which the repository is located are designed for maximum energy efficiency and minimum environmental impact.

**ASSEMBLY BILL 61**

For further information see the ~~state~~ fiscal estimate, which will be printed as an appendix to this bill.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

**SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

71.05 ~~(6)~~ (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), ~~(2dr)~~, (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), ~~(5h)~~, ~~(5i)~~, (5j), (5k), (5r), (5rm), ~~(6n)~~, and (8r) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

**SECTION 2.** 71.07 (6n) of the statutes is created to read:

71.07 **(6n)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means a person who files a claim under this subsection.

2. "Green data center" means a repository for the storage, management, and dissemination of data, if the mechanical, lighting, electrical, and computer systems of the real property in which the repository is located are designed for maximum energy efficiency and minimum environmental impact.

3. "Reduced amount" means an amount that is at least 25 percent less than the maximum amount allowed under federal law.

(b) *Filing claims.* Subject to the limitations provided in this subsection and

2011 Wisconsin Act .... (this act), section 13, for taxable years beginning after June

30, 2011, and before July 1, 2013, a claimant may claim as a credit against the taxes imposed under s. 71.02, up to the amount of the taxes, the amount that the claimant

s. 238.21

December 31, 2011, and before  
January 1, 2014

1 paid in the taxable year for the following items that are used to construct and operate  
2 a green data center: *or to retrofit a data center to become a green data center.*

- 3 1. At least 2 of the following:
  - 4 a. Low-emission building materials, including carpets and paints.
  - 5 b. Sustainable landscaping.
  - 6 c. An electronic waste recycling program, as defined by the department.
- 7 2. At least 2 of the following:
  - 8 a. Catalytic converters on back-up generators.
  - 9 b. Photovoltaics.
  - 10 c. Heat pumps.
  - 11 d. Evaporative cooling.
- 12 3. Equipment or equipment components that have a reduced amount, or none,  
13 of at least 4 of the following:
  - 14 a. Mercury.
  - 15 b. Cadmium.
  - 16 c. Lead.
  - 17 d. Chromium VI.
  - 18 e. Polybrominated biphenyls.
  - 19 f. Polybrominated diphenyl ether.

20 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
21 under this subsection and ss. 71.28 (6n) and 71.47 (6n) is \$2,000,000. No claimant  
22 may claim a credit under this subsection unless the claimant submits with the  
23 claimant's return a copy of the claimant's certification for credits *step* under ~~the~~

24 Wisconsin Act .... (this act), section 13

*s. 238.21*

## ASSEMBLY BILL 61

## SECTION 2

2. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b).<sup>✓</sup> A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

11 **SECTION 3.** 71.10 (4) <sup>(cs) ← letters</sup> (cr) of the statutes is created to read:

12 71.10 (4) <sup>(cs) ← letters</sup> (cr) Green data center credit under s. 71.07 (6n).<sup>✓</sup>

13 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

14 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
15 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s),  
16 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r) and passed  
17 through to partners shall be added to the partnership's income.

18 **SECTION 5.** 71.26 (2) (a) 4. of the statutes is amended to read:

19 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),  
20 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),  
21 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r)  
22 and not passed through by a partnership, limited liability company, or tax-option  
23 corporation that has added that amount to the partnership's, limited liability  
24 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

25 **SECTION 6.** 71.28 (6n) <sup>(cs) ← letters</sup> of the statutes is created to read:

Insert  
4-24 ✓

## ASSEMBLY BILL 61

December 31, 2011, and before January 1, 2014

✓ and who is certified under s. 238.21 ✓

1 71.28 (6n) GREEN DATA CENTER CREDIT. (a) Definitions. In this subsection:

2 1. "Claimant" means a person who files a claim under this subsection.

3 2. "Green data center" means a repository for the storage, management, and

4 dissemination of data, if the mechanical, lighting, electrical, and computer systems

5 of the real property in which the repository is located are designed for maximum

6 energy efficiency and minimum environmental impacts. *has the meaning given in s. 238.21(1)* ✓

7 3. "Reduced amount" means an amount that is at least 25 percent less than the

8 maximum amount allowed under federal law. *s. 238.21* ✓

9 (b) Filing claims. Subject to the limitations provided in this subsection and

10 2011 Wisconsin Act ... (this act), section 13, for taxable years beginning after June

11 30, 2011, and before July 1, 2013, a claimant may claim as a credit against the taxes

12 imposed under s. 71.23, up to the amount of the taxes, the amount that the claimant

13 paid in the taxable year for *any of* the following items that are used to construct and operate14 a green data center: *listed under s. 238.21(1)(a) 1. to 3., (b) 1. to 4., and (c)* ✓

15 1. At least 2 of the following:

16 a. Low-emission building materials, including carpets and paints.

17 b. Sustainable landscaping.

18 c. An electronic waste recycling program, as defined by the department.

19 2. At least 2 of the following:

20 a. Catalytic converters on back-up generators.

21 b. Photovoltaics.

22 c. Heat pumps.

23 d. Evaporative cooling.

24 3. Equipment or equipment components that have a reduced amount, or none,

25 of at least 4 of the following:

✓  
or to retrofit a data center to become a green data center.

## ASSEMBLY BILL 61

## SECTION 6

- 1 a. Mercury.  
2 b. Cadmium.  
3 c. Lead.  
4 d. Chromium VI.  
5 e. Polybrominated biphenyls.  
6 f. Polybrominated diphenyl ether.

7 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
8 under this subsection and ss. 71.07 (6n) and 71.47 (6n) is \$2,000,000. No claimant  
9 may claim a credit under this subsection unless the claimant submits with the  
10 claimant's return a copy of the claimant's certification for credits under 2011

11 Wisconsin Act .... (this act), section 13.

s. 238.21 ✓

12 2. Partnerships, limited liability companies, and tax-option corporations may  
13 not claim the credit under this subsection, but the eligibility for, and the amount of,  
14 the credit are based on their payment of amounts under par. (b). A partnership,  
15 limited liability company, or tax-option corporation shall compute the amount of  
16 credit that each of its partners, members, or shareholders may claim and shall  
17 provide that information to each of them. Partners, members of limited liability  
18 companies, and shareholders of tax-option corporations may claim the credit in  
19 proportion to their ownership interests.

20 (d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under  
21 sub. (4), applies to the credit under this subsection.

22 SECTION 7. 71.30 (3) (cr) of the statutes is created to read:

23 71.30 (3) (cr) Green data center credit under s. 71.28 (6n).

24 SECTION 8. 71.34 (1k) (g) of the statutes is amended to read:

## ASSEMBLY BILL 61

71.34 (1k) (g) An addition shall be made for credits computed by a tax-option corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r) and passed through to shareholders.

SECTION 9. 71.45 (2) (a) 10. of the statutes is amended to read:

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

SECTION 10. 71.47 (6n) of the statutes is created to read:

71.47 (6n) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means a person who files a claim under this subsection.

2. "Green data center" means a repository for the storage, management, and dissemination of data, if the mechanical, lighting, electrical, and computer systems of the real property in which the repository is located are designed for maximum energy efficiency and minimum environmental impact.

3. "Reduced amount" means an amount that is at least 25 percent less than the maximum amount allowed under federal law.

(b) *Filing claims.* Subject to the limitations provided in this subsection and

2011 Wisconsin Act .... (this act), section 13, for taxable years beginning after June

30, 2011, and before July 1, 2013, a claimant may claim as a credit against the taxes

imposed under s. 71.43, up to the amount of the taxes, the amount that the claimant

December 31, 2011, and before January 1, 2014



## ASSEMBLY BILL 61

- 8 -

LRB-1027/1  
JK&CTS:jld:jf  
SECTION 10

paid in the taxable year for the following items that are used to construct and operate  
a green data center

1. At least 2 of the following:

- a. Low-emission building materials, including carpets and paints.
- b. Sustainable landscaping.
- c. An electronic waste recycling program, as defined by the department.

2. At least 2 of the following:

- a. Catalytic converters on back-up generators.
- b. Photovoltaics.
- c. Heat pumps.
- d. Evaporative cooling.

3. Equipment or equipment components that have a reduced amount, or none,  
of at least 4 of the following:

- a. Mercury.
- b. Cadmium.
- c. Lead.
- d. Chromium VI.
- e. Polybrominated biphenyls.
- f. Polybrominated diphenyl ether.

(c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
under this subsection and ss. 71.07 (6n) and 71.28 (6n) is \$2,000,000. No claimant  
may claim a credit under this subsection unless the claimant submits with the  
claimant's return a copy of the claimant's certification for credits under 2011

Wisconsin Act .... (this act), section 13

## ASSEMBLY BILL 61

2. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

(d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

SECTION 11. 71.49 (1) (cr) of the statutes is created to read:

71.49 (1) (cr) Green data center credit under s. 71.47 (6n).

SECTION 12. 77.92 (4) of the statutes is amended to read:

77.92 (4) "Net business income," with respect to a partnership, means taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702 of the Internal Revenue Code, except items that are not deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), and (8r); and plus or minus, as appropriate, transitional adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but

## ASSEMBLY BILL 61

## SECTION 12

*Insert 10-4*

1 ~~excluding income, gain, loss, and deductions from farming "Net business income,"~~  
 2 ~~with respect to a natural person, estate, or trust, means profit from a trade or~~  
 3 ~~business for federal income tax purposes and includes net income derived as an~~  
 4 ~~employee as defined in section 3121 (d) (3) of the Internal Revenue Code.~~

*5*  
*6*  
**SECTION 13. Nonstatutory provisions.**

*7*  
*8*  
**(1) GREEN DATA CENTER CREDIT PROGRAM** *stet*

*9*  
*10*  
 (a) Not later than 30 days after the effective date of this subsection, the  
 department of commerce shall implement a program for certifying businesses as  
 eligible for tax credits under sections 71.07 (6n), 71.28 (6n), and 71.47 (6n) of the  
 statutes.

*11*  
*12*  
 (b) If the department of commerce certifies a business as eligible under  
 paragraph (a), the *a.r. corporation* shall determine the maximum amount of tax credits  
 the business may claim. The total amount of tax credits allocated to all eligible  
 businesses may not exceed \$2,000,000.

*15*  
*16*  
 (c) Notwithstanding section 227.24 of the statutes, the department of  
 commerce may promulgate emergency rules necessary to administer this subsection.  
 Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules  
 promulgated under this subsection remain in effect until the effective date of  
 permanent rules promulgated under this subsection, or the first day of the 13th  
 month after the effective date of this subsection, whichever is sooner.  
 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of  
 commerce is not required to provide evidence that promulgating a rule under this  
 subsection as an emergency rule is necessary for the preservation of the public peace,  
 health, safety, or welfare and is not required to provide a finding of emergency for a  
 rule promulgated under this subsection.

*Wisconsin Economic  
 Development Corporation*

**ASSEMBLY BILL 61**

1

(d) This subsection does not apply after June 30, 2012.

2

(END)

*note*

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0191/?ins  
JK&FFK:.....

**Insert 2 - 7**

X

1           **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2011 Wisconsin Act  
2 32, is amended to read:

3           71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),  
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),  
5 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), and  
6 (8r) and not passed through by a partnership, limited liability company, or  
7 tax-option corporation that has added that amount to the partnership's, company's,  
8 or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

**History:** 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32; s. 13.92 (1) (bm) 2.

**Insert 4 - 24**

X

9           **SECTION 2.** 71.21 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is  
10 amended to read:

11           71.21 **(4)** Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
12 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s),  
13 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), and (8r) and passed  
14 through to partners shall be added to the partnership's income.

**History:** 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 1995 a. 27, 400; 1997 a. 27; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007 a. 20, 96; 2009 a. 2, 28, 265, 269, 295, 332; 2011 a. 32.

X

15           **SECTION 3.** 71.26 (2) (a) 4. of the statutes, as affected by 2011 Wisconsin Act 32,  
16 is amended to read:

17           71.26 **(2)** (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),  
18 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),  
19 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), (8r),  
20 and (9s) and not passed through by a partnership, limited liability company, or  
21 tax-option corporation that has added that amount to the partnership's, limited



liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

**History:** 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479, 483; 2007 a. 20, 96, 97, 151, 226; 2009 a. 2, 28, 161, 165, 180, 183, 205, 265, 269, 295, 332, 344; 2011 a. 3, 5, 7, 10, 32.

**Insert 7 - 12**

**SECTION 4.** 71.34 (1k) (g) of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

71.34 (1k) (g) An addition shall be made for credits computed by a tax-option corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), and (8r) and passed through to shareholders.

**History:** 1987 a. 312; 1987 a. 411 ss. 18, 23, 146; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33, 99, 135, 255, 326; 2005 a. 25, 49, 74, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 161, 183, 265, 269, 295, 332; 2011 a. 32.

**SECTION 5.** 71.45 (2) (a) 10. of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), (8r), and (9s) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

**History:** 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 165, 205, 265, 269, 295, 332, 344; 2011 a. 3, 5, 32.

**Insert 10 - 4**

**SECTION 6.** 77.92 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

77.92 (4) "Net business income," with respect to a partnership, means taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702 of the Internal Revenue Code, except items that are not deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), and (8r); and plus or minus, as appropriate, transitional adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions from farming. "Net business income," with respect to a natural person, estate, or trust, means profit from a trade or business for federal income tax purposes and includes net income derived as an employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

**History:** 1989 a. 335; 1991 a. 39, 269; 1993 a. 16, 112, 490; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007 a. 20, 96; 2009 a. 2, 28, 265, 269, 295, 332; 2011 a. 32.

**Insert**

~~(1) "Green data center" means a repository for the storage, management, and dissemination of data, if the mechanical, lighting, electrical, and computer systems of the real property in which the repository is located are designed for maximum energy efficiency and minimum environmental impact and if the repository uses:~~

~~(a) At least 2 of the following:~~

~~1. Low-emission building materials, including carpets and paints.~~

~~2. Sustainable landscaping.~~

1 ~~3. An electronic waste recycling program, as defined by the corporation.~~

2 (b) ~~At least 2 of the following:~~

3 ~~1. Catalytic converters on back-up generators.~~

4 ~~2. Photovoltaics.~~

5 ~~3. Heat pumps.~~

6 ~~4. Evaporative cooling.~~

7 (c) ~~Equipment or equipment components that have a at least 25 percent less~~  
8 ~~than the maximum amount allowed under federal law, or none, of at least 4 of the~~  
9 ~~following:~~

10 ~~1. Mercury.~~

11 ~~2. Cadmium.~~

12 ~~3. Lead.~~

13 ~~4. Chromium VI.~~

14 ~~5. Polybrominated biphenyls.~~

15 ~~6. Polybrominated diphenyl ether.~~



**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0191/linsFFK  
FFK:.....

INSERT 10-5

1  
2       **SECTION 1.** 238.21<sup>✓</sup> of the statutes is created to read:

3       **238.21 Green data center tax credit.** (1) In this section,<sup>✓</sup> “green data center”  
4 means a repository for the storage, management, and dissemination of data, if the  
5 mechanical, lighting, electrical, and computer systems of the real property in which  
6 the repository is located are designed for maximum energy efficiency and minimum  
7 environmental impact and if the repository uses all of the following:<sup>✓</sup>

8       (a) At least 2<sup>✓</sup> of the following:

- 9           1. Low-emission building materials, including carpets and paints.<sup>✓</sup>  
10          2. Sustainable landscaping.<sup>✓</sup>  
11          3. An electronic waste recycling program, as defined by the<sup>✓</sup> corporation.

12       (b) At least 2 of the following:<sup>✓</sup>

- 13           1. Catalytic converters on back-up generators.<sup>✓</sup>  
14          2. Photovoltaics.<sup>✓</sup>  
15          3. Heat pumps.<sup>✓</sup>  
16          4. Evaporative cooling.<sup>✓</sup>

17       (c) Equipment or equipment components that have<sup>✓</sup> <sup>①</sup> at least 25 percent<sup>✓</sup> less  
18 than the maximum amount allowed under federal law, or none, of at least<sup>✓</sup> 4 of the  
19 following:

- 20           1. Mercury.<sup>✓</sup>  
21          2. Cadmium.<sup>✓</sup>  
22          3. Lead.<sup>✓</sup>  
23          4. Chromium VI.<sup>✓</sup>
- ↓

1           5. Polybrominated biphenyls. ✓

2           6. Polybrominated diphenyl ether. ✓

3           (2) The corporation shall implement a program to certify businesses for the  
4 purposes of ss. 71.07 (6n), 71.28 (6n), and 71.47 (6n). ✓ A business shall submit an  
5 application to the corporation in each calendar year for which the business desires  
6 certification.

7           (3) The corporation may certify a business under this ✓ section if, in the  
8 business's taxable year ending immediately before the date of the business's  
9 application, the business paid for an item listed in sub. ✓ (1) (a) 1. to 3., ✓ (b) 1. to 4., or  
10 (c) ✓ and the item was used to construct a green data center ✓ or to retrofit a data center  
11 to become a green data center. ✓

12           (4) If the corporation certifies a business under sub. ✓ (3), the corporation shall  
13 determine the maximum amount of tax credits the business may claim under ss.  
14 71.07 (6n), ✓ 71.28 (6n), ✓ and 71.47 (6n). ✓ The total amount of tax credits allocated to all  
15 certified businesses under this section may not exceed \$2,000,000. ✓

16           (5) The corporation shall notify the department of revenue ✓ of every certification  
17 under this section, the maximum amount of tax credits a certified business may  
18 claim under ss. 71.07 (6n), 71.28 (6n), and 71.47 (6n), ✓ and of the date on which a  
19 certification is revoked or expires.

20           (6) The corporation shall compile a list of businesses certified under this ✓ section  
21 and the taxable years for which the businesses are certified and shall make the list  
22 available to the public at the corporation's Internet Web site. ✓

(end ins 10-5)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0191/1dn

FFK:jld:rs

September 30, 2011

To Representative Strachota:

This draft creates a tax credit program under which the Wisconsin Economic Development Corporation (WEDC) certifies businesses to claim a tax credit. Structuring a tax credit program so that a taxpayer is certified to claim a tax credit by an entity that is not a unit of government is a novel issue in Wisconsin. This new structure presents a risk that a court could find that this tax program includes an impermissible delegation of the legislature's power to tax because it authorizes WEDC, which is not the state, to forego tax revenue for the state in place of the state. It is possible that the risk of a court finding that this program includes an impermissible delegation of the legislature's power could be minimized by including additional limits on WEDC's discretion or creating a larger role for the state in the process under which the tax credits are issued, or both. However, with a novel issue such as this one, it is impossible to predict how a court might treat this tax credit program in any given case.

Fern Knepp  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: fern.knepp@legis.wisconsin.gov



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBs0191/1  
JK&FFK:jld:rs

2  
RMR

ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2011 ASSEMBLY BILL 61

Friday 9 30

NOW

Regen

1 AN ACT *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45  
2 (2) (a) 10. and 77.92 (4); and *to create* 71.07 (6n), 71.10 (4) (cs), 71.28 (6n), 71.30  
3 (3) (dp), 71.47 (6n), 71.49 (1) (dp) and 238.21 of the statutes; **relating to:**  
4 creating an income and franchise tax credit for constructing and operating a  
5 data center that is designed for maximum energy efficiency and minimum  
6 environmental impact.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

7 SECTION 1. 71.05 (6) (a) 15. of the statutes, as affected by 2011 Wisconsin Act  
8 32, is amended to read:

9 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),  
10 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),  
11 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), and

1 (8r) and not passed through by a partnership, limited liability company, or  
2 tax-option corporation that has added that amount to the partnership's, company's,  
3 or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

4 **SECTION 2.** 71.07 (6n) of the statutes is created to read:

5 71.07 (6n) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

6 1. "Claimant" means a person who files a claim under this subsection and who  
7 is certified under s. 238.21.

8 2. "Green data center" has the meaning given in s. 238.21 (1).

9 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.  
10 238.21, for taxable years beginning after December 31, 2011, and before January 1,  
11 2014, a claimant may claim as a credit against the taxes imposed under s. 71.02, up  
12 to the amount of the taxes, the amount that the claimant paid in the taxable year for  
13 any of the items listed under s. 238.21 (1) (a) 1. to 3., (b) 1. to 4., and (c) that are used  
14 to construct a green data center or to retrofit a data center to become a green data  
15 center.

16 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
17 under this subsection and ss. 71.28 (6n) and 71.47 (6n) is \$2,000,000. No claimant  
18 may claim a credit under this subsection unless the claimant submits with the  
19 claimant's return a copy of the claimant's certification for credits under s. 238.21.

20 2. Partnerships, limited liability companies, and tax-option corporations may  
21 not claim the credit under this subsection, but the eligibility for, and the amount of,  
22 the credit are based on their payment of amounts under par. (b). A partnership,  
23 limited liability company, or tax-option corporation shall compute the amount of  
24 credit that each of its partners, members, or shareholders may claim and shall  
25 provide that information to each of them. Partners, members of limited liability

1 companies, and shareholders of tax-option corporations may claim the credit in  
2 proportion to their ownership interests.

3 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under  
4 s. 71.28 (4), applies to the credit under this subsection.

5 **SECTION 3.** 71.10 (4) (cs) of the statutes is created to read:

6 71.10 (4) (cs) Green data center credit under s. 71.07 (6n).

7 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is  
8 amended to read:

9 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
10 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s),  
11 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), and (8r) and passed  
12 through to partners shall be added to the partnership's income.

13 **SECTION 5.** 71.26 (2) (a) 4. of the statutes, as affected by 2011 Wisconsin Act 32,  
14 is amended to read:

15 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),  
16 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),  
17 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), (8r),  
18 and (9s) and not passed through by a partnership, limited liability company, or  
19 tax-option corporation that has added that amount to the partnership's, limited  
20 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)  
21 (g).

22 **SECTION 6.** 71.28 (6n) of the statutes is created to read:

23 71.28 (6n) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

24 1. "Claimant" means a person who files a claim under this subsection and who  
25 is certified under s. 238.21.

1           2. “Green data center” has the meaning given in s. 238.21 (1).

2           (b) *Filing claims.* Subject to the limitations provided in this subsection and s.  
3           238.21, for taxable years beginning after December 31, 2011, and before January 1,  
4           2014, a claimant may claim as a credit against the taxes imposed under s. 71.23, up  
5           to the amount of the taxes, the amount that the claimant paid in the taxable year for  
6           any of the items listed under s. 238.21 (1) (a) 1. to 3., (b) 1. to 4., and (c) that are used  
7           to construct a green data center or to retrofit a data center to become a green data  
8           center.

9           (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
10          under this subsection and ss. 71.07 (6n) and 71.47 (6n) is \$2,000,000. No claimant  
11          may claim a credit under this subsection unless the claimant submits with the  
12          claimant’s return a copy of the claimant’s certification for credits under s. 238.21.

13          2. Partnerships, limited liability companies, and tax-option corporations may  
14          not claim the credit under this subsection, but the eligibility for, and the amount of,  
15          the credit are based on their payment of amounts under par. (b). A partnership,  
16          limited liability company, or tax-option corporation shall compute the amount of  
17          credit that each of its partners, members, or shareholders may claim and shall  
18          provide that information to each of them. Partners, members of limited liability  
19          companies, and shareholders of tax-option corporations may claim the credit in  
20          proportion to their ownership interests.

21          (d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under  
22          sub. (4), applies to the credit under this subsection.

23          **SECTION 7.** 71.30 (3) (dp) of the statutes is created to read:

24          71.30 (3) (dp) Green data center credit under s. 71.28 (6n).

**SECTION 8.** 71.34 (1k) (g) of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

71.34 (1k) (g) An addition shall be made for credits computed by a tax-option corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), and (8r) and passed through to shareholders.

**SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n), (8r), and (9s) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

**SECTION 10.** 71.47 (6n) of the statutes is created to read:

71.47 (6n) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means a person who files a claim under this subsection and who is certified under s. 238.21.

2. "Green data center" has the meaning given in s. 238.21 (1).

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 238.21, for taxable years beginning after December 31, 2011, and before January 1, 2014, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes, the amount that the claimant paid in the taxable year for any of the items listed under s. 238.21 (1) ~~(A)~~ 1. to 3., (b) 1. to 4., and (c) that are used



1 to construct a green data center or to retrofit a data center to become a green data  
2 center.

3 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed  
4 under this subsection and ss. 71.07 (6n) and 71.28 (6n) is \$2,000,000. No claimant  
5 may claim a credit under this subsection unless the claimant submits with the  
6 claimant's return a copy of the claimant's certification for credits under s. 238.21.

7 2. Partnerships, limited liability companies, and tax-option corporations may  
8 not claim the credit under this subsection, but the eligibility for, and the amount of,  
9 the credit are based on their payment of amounts under par. (b). A partnership,  
10 limited liability company, or tax-option corporation shall compute the amount of  
11 credit that each of its partners, members, or shareholders may claim and shall  
12 provide that information to each of them. Partners, members of limited liability  
13 companies, and shareholders of tax-option corporations may claim the credit in  
14 proportion to their ownership interests.

15 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under  
16 s. 71.28 (4), applies to the credit under this subsection.

17 **SECTION 11.** 71.49 (1) (dp) of the statutes is created to read:

18 71.49 (1) (dp) Green data center credit under s. 71.47 (6n).

19 **SECTION 12.** 77.92 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is  
20 amended to read:

21 77.92 (4) "Net business income," with respect to a partnership, means taxable  
22 income as calculated under section 703 of the Internal Revenue Code; plus the items  
23 of income and gain under section 702 of the Internal Revenue Code, including taxable  
24 state and municipal bond interest and excluding nontaxable interest income or  
25 dividend income from federal government obligations; minus the items of loss and

1 deduction under section 702 of the Internal Revenue Code, except items that are not  
2 deductible under s. 71.21; plus guaranteed payments to partners under section 707  
3 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),  
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),  
5 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (6n),  
6 and (8r); and plus or minus, as appropriate, transitional adjustments, depreciation  
7 differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but  
8 excluding income, gain, loss, and deductions from farming. “Net business income,”  
9 with respect to a natural person, estate, or trust, means profit from a trade or  
10 business for federal income tax purposes and includes net income derived as an  
11 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

12 **SECTION 13.** 238.21 of the statutes is created to read:

13 **238.21 Green data center tax credit. (1)** In this section, “green data center”  
14 means a repository for the storage, management, and dissemination of data, if the  
15 mechanical, lighting, electrical, and computer systems of the real property in which  
16 the repository is located are designed for maximum energy efficiency and minimum  
17 environmental impact and if the repository uses all of the following:

18 (a) At least 2 of the following:

- 19 1. Low-emission building materials, including carpets and paints.  
20 2. Sustainable landscaping.  
21 3. An electronic waste recycling program, as defined by the corporation.

22 (b) At least 2 of the following:

- 23 1. Catalytic converters on back-up generators.  
24 2. Photovoltaics.  
25 3. Heat pumps.

1           4. Evaporative cooling.

2           (c) Equipment or equipment components that have at least 25 percent less than  
3 the maximum amount allowed under federal law, or none, of at least 4 of the  
4 following:

5           1. Mercury.

6           2. Cadmium.

7           3. Lead.

8           4. Chromium VI.

9           5. Polybrominated biphenyls.

10          6. Polybrominated diphenyl ether.

11          (2) The corporation shall implement a program to certify businesses for the  
12 purposes of ss. 71.07 (6n), 71.28 (6n), and 71.47 (6n). A business shall submit an  
13 application to the corporation in each calendar year for which the business desires  
14 certification.

15          (3) The corporation may certify a business under this section if, in the  
16 business's taxable year ending immediately before the date of the business's  
17 application, the business paid for an item listed in sub. (1) (a) 1. to 3., (b) 1. to 4., or  
18 (c) and the item was used to construct a green data center or to retrofit a data center  
19 to become a green data center.

20          (4) If the corporation certifies a business under sub. (3), the corporation shall  
21 determine the maximum amount of tax credits the business may claim under ss.  
22 71.07 (6n), 71.28 (6n), and 71.47 (6n). The total amount of tax credits allocated to all  
23 certified businesses under this section may not exceed \$2,000,000.

24          (5) The corporation shall notify the department of revenue of every certification  
25 under this section, the maximum amount of tax credits a certified business may

1 claim under ss. 71.07 (6n), 71.28 (6n), and 71.47 (6n), and of the date on which a  
2 certification is revoked or expires.

3 (6) The corporation shall compile a list of businesses certified under this section  
4 and the taxable years for which the businesses are certified and shall make the list  
5 available to the public at the corporation's Internet Web site.

6 **SECTION 14. Nonstatutory provisions.**

7 (1) ~~GREEN DATA CENTER CREDIT PROGRAM.~~

8 (a) ~~Not later than 30 days after the effective date of this subsection, the~~  
9 ~~Wisconsin Economic Development Corporation shall implement a program for~~  
10 ~~certifying businesses as eligible for tax credits under sections 71.07 (6n), 71.28 (6n),~~  
11 ~~and 71.47 (6n) of the statutes.~~

12 (b) ~~If the Wisconsin Economic Development Corporation certifies a business as~~  
13 ~~eligible under paragraph (a), the corporation shall determine the maximum amount~~  
14 ~~of tax credits the business may claim. The total amount of tax credits allocated to~~  
15 ~~all eligible businesses may not exceed \$2,000,000.~~

16 (END)